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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,729	08/25/2003	William T. Dalebout	13914.880	8150

7590 01/24/2005

Ryan D. Benson  
WORKMAN, NYDEGGER & SEELEY  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, UT 84111

EXAMINER
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MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 01/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/647,729

Applicant(s)

DALEBOUT ET AL.

Examiner

Fenn C Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-19 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 32, 33, 38 and 44 is/are rejected.
- 7) ☒ Claim(s) 4, 8-10, 20-31, 34-37 and 39-43 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 20-21 are objected to because of the following informalities: With respect to claim 20, the phrase "the electronic resistance selector" lacks positive antecedent basis. Claim 21 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 5-7, and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Cook (U.S. 5,123,886). As broadly claimed, Cook discloses a device including a support frame, a resilient elongate rod linked to the support frame, the resilient rod configured to provide resistance for use in exercise, a variable resistance system linked to the resilient rod to provide resistance to exercise. Cook further teaches the support frame including an upright support member (13) wherein the resilient rod is coupled to the upright support member. Cook further teaches the variable resistance system

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including cables and pulleys (21, 33). As broadly construed, Cook teaches a lever arm (24) wherein the mechanical advantage provided by the lever arm can be varied to change the amount of resistance needed to flex the resilient elongate rod. (Lever arm can be rotated, thereby affecting the angle at which the cable is pulled, thereby increasing or decreasing resistance.)

4. Claims 32-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Shifferaw (U.S. 4,620,704). Shifferaw discloses as broadly claimed, a support frame (12), a resilient elongate rod adapted to provide resistance, a cable and pulley system coupled to the support frame and the at least one resilient member, and as broadly read, a squat apparatus (handles attached to the cables may serve as a squat apparatus absent further structural distinction), movably coupled to the upright support member.

5. Claim 38 is rejected under 35 U.S.C. 102(b) as being anticipated by Fontenot (U.S. 6,113,522). Fontenot teaches a support frame, a resilient elongate rod (72) indirectly supported by the support frame, the resilient elongate rod being movable relative to the support frame such that no portion of the at least one resilient elongate rod is fixed in relation to the support frame, and a mechanism for cooperating with the at least one resilient elongate rod, the mechanism being adapted to allow a user to exercise utilizing the resistance from the at least one resilient elongate rod to perform exercise.

***Allowable Subject Matter***

6. Claims 4, 8-10, 34-37, and 39-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 20-31 would be allowable if the minor informalities were corrected. Claims 11-19 are allowed. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to teach a resilient rod providing resistance during exercise, with the resilient rod coupled to a support rod wherein both ends of the rod are movable during exercise. The prior art further fails to teach an electronic resistance selector system in conjunction with the resilient rod, providing a variable amount of resistance to the resilient rod during exercise.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jain et al.	U.S. 5,151,071
Solland	U.S. 5,895,432
Millen	U.S. 5,211,617
McBride	U.S. 6,585,626

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

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The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

fcm  
January 20, 2005

  
JUSTINE R. YU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

1/21/05